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No. 92-1920

In the Supreme Court of the United States

OCTOBER TERM, 1993

KAREN LIVADAS, PETITIONER

v.

LLOYD AUBRY, CALIFORNIA LABOR COMMISSIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether petitioner may sue the California Labor Commissioner for injunctive relief and damages under 42 U.S.C. 1983, for refusing to prosecute her state wage-and-hour claim based on her status as an employee covered by a collective bargaining agreement containing an arbitration clause.

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. On January 2, 1990, petitioner, a union-represented employee covered by a collective bargaining agreement, was discharged from her position as a clerk at a Safeway store in Napa County, California.[1] On that date, she requested payment of all wages due her. The store manager refused, telling petitioner

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[1] Petitioner was represented by Local 373, United Food and Commercial Workers, AFL-CIO. Pet. App. 24a.

that he would mail her a check instead. Petitioner received that check three days later, on January 5. Pet. App. 2a.

Petitioner believed that Safeway's three-day delay in payment violated California law. Section 201 of the California Labor Code provides: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201 (West 1989). Section 203 provides: "If an employer willfully fails to pay * * * in accordance with [Section] 201 * * * any wages of an employee who is discharged or who quits, the wages of such employees shall continue as a penalty from the due date thereof at the same rate until paid." Cal. Lab. Code § 203 (West 1989). On January 9, petitioner filed a claim with the California Division of Labor Standards Enforcement (DLSE) seeking a penalty payment from Safeway pursuant to Section 203. Pet. App. 2a.

Respondent is the California Labor Commissioner and the head of DLSE. He is authorized by Section 98.3(a) of the state Labor Code (Cal. Lab. Code § 98.3(a) (West 1989)) to prosecute actions to collect penalties on behalf of individuals who are "financially unable to employ counsel and * * * have claims which are valid and enforceable" under the California Labor Code. Pet. App. 2a-3a. On February 7, 1990, DLSE sent petitioner a letter declining to prosecute her claim. The letter stated (*id.* at 8a):

> It is our understanding that the employees working for Safeway are covered by a collective bargaining agreement which contains an arbitration clause. The provisions of Labor Code Section 229 preclude this Division from adjudicating any dispute concerning the interpretation or application of any collective bargaining agreement containing an arbitration clause.[2]
>
> Labor Code Section 203 requires that the wages continue at the "same rate" until paid. In order to establish what the "same rate" was, it is necessary to look to the collective bargaining agreement and "apply" that agreement. The courts have pointed out that such an application is exactly what the provisions of Labor Code Section 229 prohibit.

2. a. On February 16, 1990, petitioner filed an action in federal district court against respondent in his official capacity as Labor Commissioner under 42 U.S.C. 1983, seeking injunctive and declaratory relief and damages based on respondent's refusal to prosecute petitioner's claim against Safeway for the penalty prescribed by Section 203 of the state Labor Code. Pet. App. 3a. As described by the district court (*id.* at 24a-25a), the complaint alleged that DLSE maintains "[an] agency policy of discrimination in the enforcement of the California Wage and Hour Law against employees who work under collective bargaining agreements which have arbitration clauses." That policy, petitioner alleged, "denied her access to the investigatory, prosecutorial, and remedial resources provided under [the] California Labor Code * * * for the sole reason that she is an em-

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[2] Cal. Lab. Code § 229 (West 1989) states (Pet. 3):

> Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement.

ployee" covered by such an agreement. *Id.* at 25a. DLSE's policy violates Section 1983, petitioner urged, since it denies her benefits merely because she has engaged in federally protected rights to "participation in a labor union and in collective bargaining." *Ibid.*

Respondent admitted in the district court that DLSE's policy "is to enforce Labor Code [Sections] 201 and 203 for all employees except for those whose work is governed by [collective bargaining agreements] containing binding arbitration clauses." Pet. App. 25a. He defended DLSE's policy on the ground that it is required by federal labor-law preemption doctrine. Respondent explained that "[s]ince damages under [Section 203] are determined in terms of wages, which are established by the [collective bargaining agreement] * * * enforcement of the statute would entail interpretation of the [agreement]." *Id.* at 26a.

b. The district court granted summary judgment for petitioner. Pet. App. 23a-24a. The district court stated that, under this Court's decision in *Golden State Transit Corp.* v. *City of Los Angeles*, 475 U.S. 608 (1986) (*Golden State I*), a governmental state or local policy that burdens or penalizes employees' exercise of rights granted by the National Labor Relations Act (NLRA) is preempted by the NLRA. Moreover, under *Golden State Transit Corp.* v. *City of Los Angeles*, 493 U.S. 103 (1989) (*Golden State II*), an employee so affected by such a policy may obtain injunctive relief and damages from the governmental unit under Section 1983. Pet. App. 27a-32a. The district court concluded that the NLRA affords petitioner the right to negotiate, through her union, a

collective bargaining agreement containing an arbitration clause, and that DLSE's policy of granting benefits provided by state law to all employees except those who work under such a labor contract infringes upon that federal right. *Id.* at 32a-38a.

Finally, the district court rejected respondent's defense (reflected in DLSE's February 7 letter to petitioner) that DLSE was "preempted" from prosecuting petitioner's claim by Section 229 of the state Labor Code, as interpreted by the California courts.[3] The district court held that preemption doctrine is a matter of federal, not state, law, and that, insofar as Section 229 is interpreted as going beyond the requirements of federal preemption doctrine, it is invalid. Pet. App. 10a-11a. Relying on *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985), and *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), the district court concluded that petitioner's state-law claim for a penalty payment from Safeway was not preempted by Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. 185. "The simple question of whether the statute was violated," the district court found, "can be determined wholly independently from the [collective bargaining agreement]. * * * It requires reference only to a calendar, not to the [agreement], to determine that the statute was violated and penalties are due." Pet. App. 41a.

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[3] In *Plumbing, Heating and Piping Employers Council of Northern California* v. *Howard*, 126 Cal. Rptr. 406 (Cal. Ct. App. 1975), the state appellate court held that Section 229 "precludes the Labor Commissioner from hearing and enforcing a claim for collection of alleged due and unpaid wages by an employee who belongs to a union which has entered into a collective bargaining agreement which contains an arbitration clause." 126 Cal. Rptr. at 409.

Accordingly, the district court, *inter alia*, issued an injunction requiring respondent to enforce Sections 201 and 203 "without discrimination based upon a given claimant's coverage under a collective-bargaining agreement having an arbitration clause." Pet. App. 49a. It ordered respondent to institute an action on petitioner's behalf in the California courts under Section 203, and to pay her the full value of her claim in the event that the state courts found her claim time-barred. *Ibid.*

3. A divided panel of the Ninth Circuit reversed. The panel majority agreed with the district court that petitioner has a right under the NLRA to engage in collective bargaining and that she has a cause of action under Section 1983 to obtain a remedy if she has been deprived of that right by the State. Pet. App. 7a. The majority held, however, that DLSE's policy does not "implicate[] [petitioner's] federal rights at all." *Id.* at 10a. The court understood Section 229, as interpreted by the state courts, "to preclude the adjudication of claims that would be preempted by federal labor law." *Id.* at 9a. For respondent to so limit his enforcement of Section 203 claims, the court concluded, "is perfectly permissible under federal law." *Id.* at 11a. The court further stated that, even if respondent were mistaken in deciding that petitioner's claim is preempted by federal law (an issue which the majority did not reach), he did not thereby deprive her of rights under the NLRA. That is because respondent's refusal to prosecute petitioner's claim amounted, at most, to a misapplication of Section 229, and "[a] misinterpretation of a perfectly valid

state statute * * * does not provide grounds for federal relief." *Id.* at 12a.[4]

The court of appeals concluded that "[t]o hold that [petitioner] is entitled to federal relief in this case would require us to hold that she is entitled under the NLRA to a correct interpretation of California law regarding enforcement of [Section] 203 claims." Pet. App. 12a. The court stated that Congress did not intend the NLRA to confer any such entitlement upon unionized employees. The court explained that such an entitlement would "place employees who bargain collectively in a better position than those who do not because it gives them an extra avenue of redress for the erroneous determination of state law." *Id.* at 13a. Congress could not have intended that result, said the court, "[b]ecause [Section] 7 of the NLRA gives employees the right to *refrain* from bargaining collectively as well as the right to do so." *Ibid.* (emphasis in original).

In addition, the panel majority was "persuaded by the more general policies of federal labor law" that "Congress would not want state officials erring on the side of adjudicating state law disputes whenever it is a close call as to whether a claim is preempted." Pet. App. 13a-14a. "If anything," the court reasoned, "Congress would presumably want state officials to defer to arbitration * * * if a claim even arguably is intertwined with consideration of a collective bargaining agreement." *Id.* at 14a.

Judge Kozinski dissented. He noted that respondent's refusal to process petitioner's claim because she

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[4] The appropriate avenue of relief in these circumstances, the court stated, is for petitioner to seek a writ of mandate against respondent in the California courts. Pet. App. 12a.

was covered by a collective agreement "is clearly discrimination based on an exercise of protected federal rights." Pet. App. 17a. In his view, it does not matter that respondent's policy was based on his interpretation of state law: "[t]he point is, [respondent] is applying state law and his own policy in a way that impinges on protected federal rights." *Ibid.* Therefore, and contrary to the panel majority's view, it was necessary for the court to determine whether Section 301, 29 U.S.C. 185, actually preempts resolution of petitioner's claim by the state agency, not whether the state policy was reasonably intended to avoid the preemptive force of Section 301. *Id.* at 17a-18a.

Judge Kozinski then concluded, in agreement with the district judge, that, under *Lingle*, petitioner's claim is not preempted by Section 301. "A court could find that [Safeway] did not pay [petitioner] immediately upon termination—and thus violated the statute—without ever looking at the [collective bargaining agreement]." Pet. App. 19a. The dissent also found that respondent's refusal to enforce wage-and-hour claims under these circumstances impermissibly burdens the NLRA rights of employees in petitioner's position in two ways. First, it denies only employees "who exercise their federal labor rights" the right to have the Commissioner press their state labor law claims for them free of charge. *Id.* at 20a. Second, it impedes unionization efforts by giving employers a plausible basis for telling employees during election campaigns that if they "vote for the union," then "the state Labor Commissioner [will] abandon[] you." *Id.* at 21a & n.2.

DISCUSSION

The court of appeals correctly acknowledged (Pet. App. 7a) that the NLRA gives petitioner "a right to engage in collective bargaining, and Section 1983 therefore provides a remedy for a deprivation of that right." See *Golden State II*, 493 U.S. at 108-109. The panel majority erred, however, in concluding that respondent did not burden petitioner's rights under the NLRA by refusing to prosecute her claim under the California Labor Code based on her status as an employee covered by a collective bargaining agreement. If allowed to stand, this decision will have a detrimental effect on the ability of employees covered by collective bargaining agreements to enjoy protections guaranteed to all workers under state law. The United States, and the National Labor Relations Board in particular, have an important interest in insuring that States do not discriminate against employees who exercise their rights under the NLRA, and that States enforce their laws in a manner consistent with NLRA and Section 301 preemption principles. The court of appeals' decision misapplies Section 301 preemption principles and is inconsistent with decisions of this Court holding that state action that impairs rights protected by the NLRA is preempted by direct operation of the Supremacy Clause. Review by this Court therefore is warranted.

1. This Court has made clear that state action that impairs rights created by the NLRA is barred by direct operation of the Supremacy Clause. *Nash* v. *Florida Industrial Commission*, 389 U.S. 235 (1967); see also *Brown* v. *Hotel Employees*, 468 U.S. 491, 503 (1984); *Hill* v. *Florida*, 325 U.S. 538 (1945). For example, in *Nash*, the Florida Indus-

trial Commission interpreted a state law that barred individuals unemployed due to a labor dispute from receiving unemployment benefits as applying to any individual who filed an unfair labor practice charge with the National Labor Relations Board. The Court found that the "financial burden" imposed by the State's rule, "like the coercive actions which employers and unions are forbidden to engage in, has a direct tendency to frustrate the purpose of Congress to leave people free to make charges of unfair labor practices to the Board." 389 U.S. at 239. It therefore concluded that the Florida law, as applied, violated the Supremacy Clause because the State could not "defeat or handicap a valid national objective by threatening to withdraw state benefits from persons simply because they cooperate with the Government's constitutional plan." *Ibid.*

Here, too, the State has denied petitioner a state benefit—the prosecution of a wage claim—simply because she has exercised a right granted by the NLRA. Section 7 of the NLRA, 29 U.S.C. 157, guarantees employees the right to bargain collectively, and Section 8(a)(1), 29 U.S.C. 158(a)(1), makes it an unfair labor practice for an employer to coerce employees in the exercise of that right. There is no doubt that an employer could not deny an employee a benefit to which she was otherwise entitled simply because she was covered by a collective bargaining agreement. A State cannot do so either.[5]

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[5] Petitioner asserts (Pet. 7-8, 11) that this case, like *Golden State I*, involves *Machinists* preemption. See also Pet. App. 37a-38a (district court opinion). *Machinists* preemption precludes States from regulating in areas that Congress intended to be "free from all regulations, whether state or federal." *Building Trades Council* v. *Associated Builders*, 113 S. Ct. 1190, 1195 (1993); see also *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 749-751 (1985); *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976). On the contrary, the state action in this case is barred not because it intrudes into an area that Congress intended to leave unregulated, but because "of an actual conflict with [Section] 7." *Brown* v. *Hotel Employees*, 468 U.S. at 501.

In any event, it is immaterial to our analysis whether preemption is based on actual conflict with Section 7 or on principles of preemption as defined in the *Machinists* case. In *Golden State II*, the Court explained that a Section 1983 suit could be predicated, as here, on state interference with rights "explicitly set forth in [Section] 7," or, as in *Golden State I*, on state interference with "the right to make use of 'economic weapons,' not explicitly set forth in the [NLRA], free of governmental interference." 493 U.S. at 110-111.

2. Despite the fact that petitioner was denied a state benefit simply because she was covered by a collective bargaining agreement with an arbitration provision, the court of appeals found no deprivation of a federal right. The court's reasoning is flawed in several respects.

a. The court of appeals attempted to characterize this case (Pet. App. 11a) as one in which petitioner "does not challenge the condition the Commissioner places on his enforcement" of wage-and-hour claims —that is, that enforcement of such claims "not require the interpretation or application of a collective bargaining agreement"—but only "the application of the rule to her case." In refusing to process petitioner's claim, however, respondent did not make an individualized determination that enforcing petitioner's claim would require interpretation of a collective bargaining agreement. Rather, he followed a blanket rule, articulated by the California courts, of not

processing the claim of any employee covered by a collective bargaining agreement containing an arbitration clause. The district court found that "the policy of the DLSE is to enforce Labor Code §§ 201 and 203 for all employees except for those whose work is governed by CBAs containing binding arbitration clauses," Pet. App. 25a, and the court of appeals did not specifically disturb that finding. Indeed, it cited with approval (*id.* at 9a) the opinion in *Plumbing, Heating and Piping Employers Council of Northern California* v. *Howard*, 126 Cal. Rptr. 406 (Cal. Ct. App. 1975), in which the state court held that Section 229 of the California Labor Code precludes the Labor Commissioner from enforcing an unpaid wages claim "by an employee who belongs to a union which has entered into a collective bargaining agreement which contains an arbitration clause." 53 Cal. App. 3d at 832-833, 126 Cal. Rptr. at 409.

b. But even if, as respondent contends (Br. in Opp. 4-8), petitioner's claim can be viewed as a challenge to respondent's allegedly overinclusive or erroneous application of a statute that precludes processing claims that are preempted by federal law (because they involve the interpretation of a collective agreement), petitioner would still have a cause of action under Section 1983 against respondent for interfering with the exercise of her rights under the NLRA. We do not dispute that a State would be entitled to adopt a rule of refusing to process claims that come within the scope of this Court's doctrine of federal labor law preemption under Section 301 of the LMRA, as articulated in *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), and other cases [6]; however, the Commissioner simply does not follow such a practice here. In applying Section 229 of the state Labor Code, the Commissioner has in fact adopted a general rule that exceeds the scope of federal preemption: he does not enforce wage-and-hour claims of individuals covered by collective agreements containing an arbitration clause. Contrary to respondent's assertion, Section 301 of the LMRA does not preempt this broad category of claims. As the dissent correctly observed (Pet. App. 19a), it is not necessary to refer to the collective agreement to determine whether Safeway paid petitioner immediately upon termination as required by state law. Nor is preemption required because it might be necessary to refer to the collective bargaining agreement to determine the amount of wages due an employee in a wage-and-hour dispute. Cf., *e.g.*, Pet. App. 8a, 26a, 43a. See also Section 203

[6] The Court in *Lingle*, 486 U.S. at 409-410, ruled that a state law claim is preempted under Section 301 of the LMRA only if resolution of the claim involves interpreting a collective bargaining agreement. See also *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. at 220 (preemption applies when "resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract."). Even though the employee in *Lingle* was covered by a collective bargaining agreement containing a "just cause" discharge clause, the Court held that a state tort claim of retaliatory discharge was not preempted because its resolution involved "purely factual questions" pertaining to the conduct of parties and "does not require construing the collective-bargaining agreement." 486 U.S. at 407. The Court emphasized that Section 301 preemption "merely ensures that federal law will be the basis for interpreting collective-bargaining agreements, and says nothing about the substantive rights a State may provide to workers when adjudication of those rights does not depend upon the interpretation of such agreements." *Id.* at 409.

of the California Labor Code (measure of damages is the "same rate" that the employee was receiving when discharged). As *Lingle* made clear, 486 U.S. at 413 n.12:

> A collective-bargaining agreement may, of course, contain information such as rate of pay and other economic benefits that might be helpful in determining the damages to which a worker prevailing in a state-law suit is entitled. * * * In such a case, federal law would govern the interpretation of the agreement, but the separate state-law analysis would not be thereby pre-empted.

Because claims such as petitioner's are not pre-empted under Section 301, the DLSE's policy, as applied by the Commissioner, amounts to a categorical refusal to enforce wage-and-hour claims of individuals covered by collective bargaining agreements that are not in fact preempted under federal law, while at the same time enforcing similar claims for the benefit of other employees not covered by such agreements. By according less favorable treatment to individuals based on their status as employees covered by collective bargaining agreements, the State has in effect discriminated against them because of the exercise of their rights under the NLRA. The fact that the discrimination might be characterized as arising from an "error" in applying a statutory scheme that purports to coincide with the scope of federal preemption does not affect the analysis in this case. For, if the error is based on a misconception of the requirements of federal law and thus systematically results in abridging federally protected rights, the facial validity of the State's general rule does not excuse the

State's categorical error in applying that rule.[7] Rather, all that matters is that the Commissioner has applied state law to withdraw important protections from an entire group of individuals on the basis of their exercise of federally protected rights.

3. The court of appeals' decision in this case is inconsistent in principle with decisions in other circuits. In *Rum Creek Coal Sales, Inc.* v. *Caperton*, 971 F.2d 1148 (1992), the Fourth Circuit, relying on this Court's decision in *Lodge 76, Int'l Ass'n of Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976), and the *Golden State* cases, enjoined the State's policy of not arresting picketers trespassing on a coal mine operator's property during a strike. State officials defended that policy on the au-

[7] Even if the preemption rationale for DLSE's policy, as interpreted by the court of appeals, might conceivably permit the Commissioner to pursue the wage-and-hour claims of *some* individuals covered by collective bargaining agreements (*e.g.*, those covered by agreements that do not dictate wages), the pattern of enforcement dictated by such a policy would still give rise to a cause of action under the *Golden State* cases, if, as here, the Commissioner was refusing to process a category of claims that is not in fact preempted. A policy that systematically results in the enforcement of *all* claims of eligible employees who are not covered by collective agreements, but of only *some* claims of employees covered by such agreements, would impermissibly burden the right to bargain collectively under the NLRA, because the Commissioner's less favorable treatment would be triggered by an employee's having exercised his Section 7 rights. In any event, a policy of not enforcing wage-and-hour claims for employees covered by collective bargaining agreements that determine wage rates, see Pet. App. 8a, is tantamount in practice to a rule of non-enforcement for all employees covered by collective bargaining agreements for the simple reason that such agreements customarily cover wages and hours.

thority of the state "Neutrality Statute," which barred the state police from "aid[ing] or assist[ing] either party" to "any labor trouble or dispute between employer and employee." 971 F.2d at 1150. The court acknowledged that the state statute placed a facially neutral and permissible condition upon the ability of the parties to a labor dispute to claim the benefit of the services of the state police. It nonetheless held that, by interpreting the Neutrality Statute as requiring state officials to "allow[] * * * strikers to * * * prevent[] ingress and egress into [private] property," 971 F.2d at 1154, the State applied the statute in a manner that was neither required nor permitted by federal labor law. The court first explained that the State's interpretation of the statute was not required by the preemption doctrine articulated by this Court in *Machinists*. The court of appeals observed that, although federal labor law creates "a free zone from which all regulation [of labor activity], whether state or federal, is excluded," 971 F.2d at 1153, it nevertheless "allows state governments to restrict labor activity that involves 'obstructing or attempting to obstruct free ingress or egress to and from * * * property.'" *Ibid.* The court then held that the coal mine operators had a cause of action under the *Golden State* cases because the State's application of the Neutrality Statute to bar state officials from enforcing the law against the strikers under those circumstances undermined the coal company's "rights to stay in business and withstand a strike" guaranteed under federal labor law, and thus ran contrary to the principles of neutrality established in *Machinists*. 971 F.2d at 1154.[8]

[8] The court of appeals attempted to distinguish *Rum Creek Coal Sales* by characterizing it as a case "where the state's

Analogously, in this case, the Labor Commissioner's categorical refusal to prosecute wage-and-hour claims of employees covered by collective bargaining agreements containing arbitration clauses is neither required nor permitted under federal labor law. The Commissioner's policy is not dictated by federal preemption principles, and it undermines employees' federally guaranteed rights to bargain collectively by penalizing the exercise of those rights.

The decision in *United Steelworkers* v. *Johnson*, 830 F.2d 924 (8th Cir. 1987) (en banc), is also at odds with the approach of the Ninth Circuit in this case. There, the court enjoined the state Secretary of Labor from denying unemployment benefits to union employees while granting benefits to their non-union co-workers in connection with the same labor dispute. The court acknowledged that the state statute, which prescribed an "able and willing to work" eligibility standard for unemployment benefits, was valid and could be applied to employees participating in a labor dispute, but it nonetheless held that the State had "failed to apply this test in a neutral, nondiscriminatory manner" by presuming that no union members,

excepting labor disputes from its trespass law cut too broad a preemption path." Pet. App. 14a-15a n.2. However, that captures the essence of petitioner's claim as well, since she alleges that the State's non-enforcement policy under its statutory scheme trenches on Section 7 rights by virtue of cutting "too broad a preemption path." Respondent discusses (Br. in Opp. 14-15) a Fourth Circuit opinion in an earlier phase of the *Rum Creek Coal Sales* litigation, 926 F.2d 353 (4th Cir. 1991), in which the court granted a preliminary injunction against enforcement of the state statutes at issue, but did not reach the merits of the permissible application of the Neutrality Statute. See 971 F.2d at 1152 (summarizing previous opinion).

as opposed to non-members, would be willing to work despite the labor dispute. 830 F.2d at 928-929. Analogously, in this case, respondent has failed to apply the California Labor Code in a nondiscriminatory manner by adopting the unwarranted assumption that every wage-and-hour claim of an employee covered by a collective bargaining agreement containing an arbitration clause is unenforceable under principles of federal labor law preemption.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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